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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Alasdair Craig Stamps

1300-1-013PCT/US

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11/21/2008

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EXAMINER

NATARAJAN, MEERA

ART UNIT

PAPER NUMBER

1643

MAIL DATE

DELIVERY MODE

11/21/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



**DETAILED ACTION**

1. Applicant's amendments in the reply filed on 08/01/2008 is acknowledged and entered into the record.
2. Accordingly, Claims 8-11 and 13-26 are pending.
3. Claims 10, 11, and 13-26 are withdrawn as being drawn to non-elected inventions.
4. Claims 8 and 9 will be examined on the merits.

***Claim Rejections Maintained - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The rejection of Claims 8 and 9 under 35 U.S.C. 102(b) as being anticipated by Tang et al. (WO/2001/066689) is maintained for the reasons of record.
7. In response to Applicant's argument that the prior art lacks enablement, it is noted that "the standard for enablement of a prior art reference for purposes of anticipation under section 102 differs from the enablement standard under 35 USC § 112" and that "anticipation does not require actual performance of suggestions in a disclosure. Rather, anticipation only requires that those suggestions be enabled to one of skill in the art." (See, *Impax Laboratories Inc.*,

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81 U.S.P.Q.2d 1001, 1012, citing *Novo Nordisk Pharms., Inc v. Bio-Tech. Gen. Corp.*, 424 F.3d 1347, 1355 (Fed. Cir. 2005)).

8. Furthermore, Applicant has not provided any deficiency in the prior art teaching. As stated in the original office action mailed 03/06/2008 Tang et al. teach method for the treatment of cancer comprising administering to a subject a therapeutically effective amount of a composition comprising an antibody that binds to the KIAA0659 polypeptide. Tang et al. teach SEQ ID NO:340 which is identical to SEQ ID NO:1 of the instant application.

9. Attorney argument cannot take the place the evidence lacking in the record. *Meitzner v. Mindick*, 193 USPQ 17, 22 (CCPA 1977).

10. Applicant's arguments have been fully considered but are not found convincing essentially for the reasons of record set forth in the previous Office Action. Therefore the rejection is maintained for the reasons of record.

***All other rejections of record are withdrawn in view of applicants amendments to the claims filed on 08/01/2008.***

### ***Conclusion***

11. Claims 8 and 9 are rejected.

12. No Claim is allowed.

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MEERA NATARAJAN whose telephone number is (571)270-3058. The examiner can normally be reached on Monday-Thursday, 9:30AM-7:00PM, ALT. Friday. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Helms can be reached on 571-272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR

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Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MN

/Larry R. Helms/  
Supervisory Patent Examiner, Art Unit 1643